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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/742,307 | 12/19/2003 | Kenneth W. Whitley | 79557 | 5667 |
| 26253 | 7590 | 10/26/2007 | | |
| DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON, DICKINSON AND COMPANY 1 BECTON DRIVE, MC 110 FRANKLIN LAKES, NJ 07417-1880 | | | EXAMINER MAI, TRI M | |
| | | | ART UNIT 3781 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/742,307

Applicant(s)

WHITLEY, KENNETH W.

Examiner

Tri M. Mai

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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1. Claims 1-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 7,247,471 in view of Gilbert '770 and Norwood. Claims 1-13 of U.S. Patent No. 7,247,471 teaches the helical pleat. Claims 1-13 meets all claimed limitations except for the apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex.

Gilbert teaches that it is known in the art to provide an apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex. Thus, to provide the apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex would have been obvious to provide the desired top and bottom for the container and to provide the desired type of pleating for the container.

2. Claims 1-4, and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (3946903) in view of Norwood (5209372), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Norwood in view of Parker. Parker teaches a bottle having a bottom wall formed by portion 2 in Fig. 2 including the slanted sidewall at numeral 2, sidewall and a top wall the bottom wall being formed unitarily with and having a generally having the same diameter as the sidewall. Parker also teaches first and second inner apices 13 being located generally equal from the outer apex 12. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in Parker. With respect to the bottom wall and the top wall each terminate at a diameter generally equal to a diameter defined by the outer apex, it would have been obvious to one of ordinary skill in the art to provide the top

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and bottom having the same diameter as the body to provide an alternative bottom for the container and to enable one to collapse the container easily.

It would have been obvious to one of ordinary skill in the art to provide the thickness as claimed to provide the desired thickness for the container.

Regarding claim 7, it would have been obvious to one of ordinary skill in the art to provide the pitch as claimed to provide the desired angle for the helical pleat.

Regarding claim 8, it would have been obvious to one of ordinary skill in the art to provide the distance as claimed to provide the desired size for the pleat.

In the alternative, it would have been obvious to one of ordinary skill in the art to provide the pleating with the first and second pleat being generally equal from the outer apex as taught by Parker to provide the desired structure for the pleats and/or to provide the desired locking force for the collapsed bottle.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-335036 in view of Norwood or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Norwood in view of JP'036. JP '036 teaches a sidewall formed with at least one helical pleat as claimed. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in JP '036. With respect to the bottom wall and the top wall each terminate at a diameter generally equal to a diameter defined by the outer apex, it would have been obvious to one of ordinary skill in the art to provide the top and bottom of Norwood in JP '036 to provide an alternative bottom for the container and to enable one to collapse the container easily.

Regarding claim 5, note that helical pleat is interrupted by a plurality of planar sections at portion 5. Note that the claim does not exclude the plurality of planar sections extending from bottom wall to top wall at all. In this case, the plurality of planar sections 5, together extending substantially from bottom wall to the top wall.

In the alternative, it would have been obvious to one of ordinary skill in the art to provide the pleating with the first and second pleat being generally equal from the outer apex as taught by Parker to provide the desired structure for the pleats.

4. Claims 1, 2, 3, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilbert (RE38770). Gilbert teaches the helical pleat with bottom and top with the same diameter as shown in Fig. 1.

5. Claims 4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert. To provide the plastic material with the thickness as set forth in claim 4, and the specificities in claim 6 and 8 would have been obvious since they are providing the desired thickness/proportion for the sidewall of the container.

6. Applicant's arguments have been fully considered but they are not persuasive. With respect to the combination, applicant asserts that there is no teaching in any of the references for a "roller bottle for cell growth culturing". The examiner submits that this is an intended use. The structure of the bottle does not impart any structure over the combination of Parker or JP '036 in view of Norwood. With respect to the combination, the examiner submits that to provide an alternative structure for the top and bottom as taught by Norwood would have been obvious. Furthermore, in light of KSR decision, simple substitution of one known element for another to obtain predictable results would have been obvious.


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In the alternative, it would have been obvious to one of ordinary skill in the art to provide the pleating with the first and second pleat being generally equal from the outer apex as taught by Parker to provide the desired structure for the pleats and/or to provide the desired locking force for the collapsed bottle.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tri M. Mai
Primary Examiner
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